

Majestic Molded Products, Inc. and United Industry Workers Local 424, a Division of United Industry Workers District Council 424. Case 29-CA-17938

September 28, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Upon a charge filed by United Industry Workers Local 424, a Division of United Industry Workers District Council 424 (the Union) on January 10, 1994, the General Counsel of the National Labor Relations Board issued a complaint on February 15, 1994, against Majestic Molded Products, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On August 10, 1994, the General Counsel filed a Motion for Summary Judgment. On August 12, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be deemed to be admitted . . . to be true and may be so found by the Board." Section 102.20 also states that an answer should specifically admit, deny, or explain each of the facts alleged in the complaint unless the respondent is without knowledge, in which case it shall so state.

The undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated May 26, 1994, notified the Respondent that unless an answer was received by June 10, 1994, a Motion for Summary Judgment would be filed. Thereafter, the parties attempted to resolve the matter "by consideration of certain proof received by Counsel for the General Counsel from Respondent allegedly establishing that it was no longer operating and that it had no ability to make the Fund contributions which were due and owing." By letter dated June 10, 1994, to counsel for the General Coun-

sel, the Respondent's counsel inquired as to why the Union had not withdrawn the matter in light of documentation that the Respondent's "bank took over the assets of the company and that the company was [sic] gone out of business." By letter dated July 7, 1994, counsel for the General Counsel notified the Respondent and its counsel, by certified mail, that the Union had not accepted the Respondent's representations of inability to pay and did not wish to withdraw the matter. The letter further stated that unless an answer to the complaint was received by July 21, 1994, a Motion for Summary Judgment would be filed. The Respondent has failed to file an answer and has not sought an extension of time in which to do so.

The Respondent's June 10, 1994 letter to counsel for the General Counsel concerning the alleged takeover of its assets by its bank and its cessation of operations does not constitute a proper answer to the complaint because the letter does not address the facts alleged in the complaint. Furthermore, it is well established that a "claim of financial difficulty, 'even if proven, does not constitute an adequate defense to an allegation that an employer has unlawfully failed to abide by provisions of a collective-bargaining agreement.'" *Demun Market*, 314 NLRB 714 (1994), quoting *Zimmerman Painting & Decorating*, 302 NLRB 856, 857 (1991). Therefore, even if the June 10, 1994 letter constituted an adequate answer to the complaint, the Respondent has raised no issues warranting a hearing.

In the absence of good cause being shown for the failure to file a proper and timely answer, and in the absence of any material issues warranting a hearing, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation with its office and principal place of business located at 4333 Veterans Highway, Holbrook, New York, has been engaged in the manufacture, nonretail sale, and distribution of plastic molded products. During the year preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, purchased and received at its Holbrook facility plastic products and other goods and materials valued in excess of \$50,000 directly from suppliers located within the State of New York, which suppliers, in turn, purchased and received those goods and materials directly from suppliers located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, maintenance, and shipping and receiving employees employed by Respondent at its Holbrook facility, excluding all other employees, tool room employees, guards and supervisors as defined in the Act.

Since about August 7, 1989, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees, and has been recognized as such representative by the Respondent. Recognition has been embodied in a series of collective-bargaining agreements, the most recent of which is effective by its terms for the period from August 7, 1992, to August 7, 1995. At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

B. *The Refusal to Bargain*

The collective-bargaining agreement described above contains a provision requiring the Respondent to make monthly contributions to the Local 424 Welfare Fund on behalf of its employees in the unit described above. Since about September 1, 1993, the Respondent has failed and refused to make monthly contributions to the Local 424 Welfare Fund for the months of September through December 1993 for its unit employees as required by the collective-bargaining agreement. The Respondent engaged in these acts and conduct without prior notice to the Union, and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the unit employees, with respect to such acts and conduct and the effects thereof, and without the Union's consent. By these acts and conduct, the Respondent has refused, and is refusing, to bargain collectively with the representative of its employees and has thereby been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing to make monthly contributions to the Local 424 Welfare Fund for the months of September through December 1993, the Respondent has engaged in unfair labor practices affecting com-

merce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the Local 424 Welfare Fund, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In light of the Respondent's representations to counsel for the General Counsel that the Respondent is no longer operating, we shall also provide for mail notices to employees.

ORDER

The National Labor Relations Board orders that the Respondent, Majestic Molded Products, Inc., Holbrook, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by failing and refusing to make required contributions to the Local 424 Welfare Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit the delinquent Local 424 Welfare Fund contributions, including any additional amounts due the fund, and reimburse the unit employees for any expenses ensuing from the Respondent's failure to make the required payments, in the manner set forth in the remedy section of the decision.

(b) On request, bargain with United Industry Workers Local 424, a Division of United Industry Workers District Council 424 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production, maintenance, and shipping and receiving employees employed by Respondent at its Holbrook facility, excluding all other employees, tool room employees, guards and supervisors as defined in the Act.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Holbrook, New York, and mail to the Union and to all unit employees, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Union as the exclusive collective-bargaining representative of our unit employees by failing and refusing to make required contributions to the Local 424 Welfare Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit the delinquent Local 424 Welfare Fund contributions, including any additional amounts due the fund, and WE WILL reimburse the unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL, on request, bargain with United Industry Workers Local 424, a Division of United Industry Workers District Council 424 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production, maintenance, and shipping and receiving employees employed by us at our Holbrook facility, excluding all other employees, tool room employees, guards and supervisors as defined in the Act.

MAJESTIC MOLDED PRODUCTS, INC.